



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on **June 17, 2004**

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-16972¹

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Application of **CONTINENTAL AIRLINES, INC., and AEROVIAS DE MEXICO, S.A., DE C.V. (AEROMEXICO)**,² filed **1/26/04**, and supplemented on **4/8/04**,³ for:

Exemption authority for Aeromexico and its affiliate to engage in scheduled foreign air transportation of persons, property, and mail between Villahermosa, Mexico, and Houston, Texas. The joint applicants request that this exemption authority be granted for a period of one year.

Statements of authorization for Continental and its affiliate to display Aeromexico's "AM*" designator code on flights operated by Continental in the Houston-Villahermosa market. The joint applicants request that the statements of authorization be granted for an indefinite period.⁴

Responsive Pleadings:

The City of Houston and the Greater Houston Partnership filed an answer in support of the application. No other responses were received.

Applicant reps: **R. Bruce Keiner, Jr. (CO) (202) 624-2615 and William C. Evans (AM) (202) 861-6459**
DOT Analyst: **Linda L. Lundell (202) 366-2336**

DISPOSITION⁵

1. We grant exemption authority to Aeromexico, to the extent necessary, to provide scheduled foreign air transportation of persons, property, and mail between Villahermosa, Mexico, and Houston, Texas;
2. We grant to Continental and ExpressJet statements of authorization under Part 212 of the Department's regulations to display the airline designator code of Aeromexico, on all flights operated by Continental/ExpressJet (for the carriage of Aeromexico's authorized traffic) between Houston, Texas, and Villahermosa, Mexico;
3. We defer on the request for exemption authority, along with Part 212 and Part 216 authority, for Aerolitoral in the captioned docket (see remarks, below);

¹ See Notice of Action Taken dated May 18, 2004, in the captioned docket, for a detailed description of the application filed, along with our earlier action in this matter.

² Specifically, the joint applicants in this application are as follows: Continental and its affiliate ExpressJet Airlines, Inc., d/b/a Continental Express (ExpressJet), and Aeromexico and its affiliate and code-share partner, Aerolitoral, S.A. de C.V. (Aerolitoral). The joint applicants state that flights designated as Continental flights in the instant application will be operated by Continental or by ExpressJet. The joint applicants also state that Aeromexico seeks authority in the instant application on behalf of itself and on behalf of Aerolitoral. However, for reasons set forth in the Remarks below, we are deferring on that portion of the application that involves proposed code-share services with Aerolitoral.

³ The supplement contained information that had been redacted from the copy of the code-share agreement that the joint applicants had previously submitted with their application. We would also note that on May 14, 2004, the joint applicants filed a letter in Docket OST-2004-16972 to clarify that they were not requesting exemption authority for Continental to operate code-share flights beyond its Mexican gateways, or for Aeromexico to operate code-share flights beyond its U.S. gateways.

⁴ By Notice of Action Taken dated May 18, 2004, in the captioned docket, we had deferred, until further notice, on the applicants' request for authority to provide code-share services in the Houston-Villahermosa market pending receipt of the necessary security clearances. Those security clearances have now been received. Thus, we are able to proceed here.

⁵ Authority granted by this notice is subject to the conditions outlined below; see also remarks, below.

4. The statements of authorization granted above are effective immediately and shall remain in effect indefinitely, subject to the conditions outlined below;
5. The exemption authority granted above to Aeromexico is effective immediately for a period of one year from the date of this notice, subject to the conditions outlined below;
6. The exemption authority granted by this Notice is limited to operations conducted on a code-share basis only.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX The authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

- XX** Continental and ExpressJet's certificates of public convenience and necessity
- XX** Aeromexico's foreign air carrier permits
- XX** Standard Exemption Conditions (attached)

Additional Conditions:

The code-share operations authorized are subject to the following conditions:

- (a) The respective statements of authorizations will remain in effect only as long as (i) the subject U.S. carriers and the subject Mexican-flag carrier continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share and/or alliance agreement providing for the code-share operations remains in effect;
- (b) The subject U.S. carriers and/or the subject Mexican-flag carrier must promptly notify the Department (Office of International Aviation) if the code-share agreement is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services.⁶ (Such notice should be filed in Docket OST-2004-16972);
- (c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected;
- (d) The authority granted here is specifically conditioned so that neither the subject U.S. carriers nor the subject Mexican-flag carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

⁶ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

Remarks:**Authority for Aerolitoral**

The joint application states that Continental will perform an oversight review of Aerolitoral's operations and submit a copy of that certification to the Department.⁷ The joint applicants have orally advised the Department that, while this review is being completed, they wish to proceed with that portion of the application involving services that have been reviewed (Continental/ExpressJet/Aeromexico). Under these circumstances, and consistent with our action in the Notice of Action Taken dated May 18, 2004, in this matter, we will continue to defer action on that portion of the application that involves proposed code-share services with Aerolitoral until further notice.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicants qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or deferred, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:

http://dms.dot.gov/reports/reports_aviation.asp

⁷ By letter dated February 10, 2004, Continental advised the Department that Aeromexico was audited by Continental in accordance with the Foreign Code Share Safety Program approved for use by Continental and that Aeromexico met all applicable ICAO standards. And, by memorandum dated April 6, 2004, the Federal Aviation Administration (FAA) advised the Department that it had completed its review of the proposed code-share arrangement between Continental and Aeromexico and interposed no objection to the request.

Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.